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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jenae Finton, et al.,

10 Plaintiffs,

11 v.

12 Cleveland Indians Baseball Company LLC,

13 Defendant.
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No. CV-19-02319-PHX-MTL

ORDER

15 Before the Court is Plaintiffs Janae and Trevor Finton's (collectively, "Ms.
16 Finton") Motion for Clarification/Modification of the Court's February 19, 2021 Order
17 Regarding Summary Judgment (the "Motion"). (Doc. 88.) Defendant Cleveland Indians
18 Baseball Co., LLC (the "Club") filed a response. (Doc. 90.) The Court resolves this
19 Motion as follows.¹

20 **I.**

21 "There is no Federal Rule of Civil Procedure specifically governing motions for
22 clarification." *Adams v. Symetra Life Ins. Co.*, No. CV-18-0378-TUC-JGZ (LAB), 2020
23 WL 4814249, at *1 (D. Ariz. Aug. 19, 2020) (quoting *United States v. All Assets Held at*
24 *Bank Julius, Baer & Co.*, 315 F. Supp. 3d 90, 99 (D.D.C. 2018)). "The general purpose of
25 a motion for clarification is to explain or clarify something ambiguous or vague, not to
26 alter or amend." *Id.* A motion for reconsideration invites the court to re-litigate a matter,

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28 ¹ Both parties have submitted legal memoranda and oral argument would not have aided the Court's decisional process. *See Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998); *see also* LRCiv 7.2(f); Fed. R. Civ. P. 78(b).

1 but it is appropriate in only “rare circumstances.” *Defs. of Wildlife v. Browner*, 909 F.
 2 Supp. 1342, 1351 (D. Ariz. 1995). A motion for reconsideration is appropriate where “the
 3 district court (1) is presented with newly discovered evidence [that could not have been
 4 presented earlier with reasonable diligence], (2) committed clear error or the initial
 5 decision was manifestly unjust, or (3) if there is an intervening change in controlling
 6 law.” *Sch. Dist. No. 1J, Multnomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.
 7 1993); *see also* LRCiv 7.2(g).

8 A motion for reconsideration should not be used to ask the court to rethink its
 9 previous ruling, whether that was decided “rightly or wrongly.” *Defs. of Wildlife*, 909 F.
 10 Supp. at 1351. A motion for reconsideration “may not be used to raise arguments or
 11 present evidence for the first time when they could reasonably have been raised earlier in
 12 the litigation.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)
 13 (emphasis in original). Nor may the motion repeat any argument previously made in
 14 support of or in opposition to a motion. *Motorola, Inc. v. J.B. Rodgers Mech.*
 15 *Contractors, Inc.*, 215 F.R.D. 581, 586 (D. Ariz. 2003); LRCiv 7.2(g)(1). Mere
 16 disagreement with a previous order cannot be a basis for reconsideration. *See Adams*,
 17 2020 WL 4814249, at *2.

18 II.

19 This Court has previously set forth this case’s background in detail. (Doc. 75.) At
 20 issue now is Ms. Finton’s Motion asking this Court to reconsider a portion of its February
 21 19 Order. Specifically, Ms. Finton objects to this Court’s grant of summary judgment to
 22 the Club on Count IV—Ms. Finton’s “Arizona Wage Law Failure to Pay Wages” claim.²
 23 (Doc. 88 at 1–2.) Ms. Finton contends that the Court foreclosed her “only avenue” for
 24 recovering unpaid wages under Count IV “because of a potentially mistaken belief that
 25 Ms. Finton alleged a state law claim for overtime pay . . . instead of a garden variety
 26 claim for unpaid wages under Arizona law.” (*Id.* at 2.) The Court agrees, in part, with Ms.
 27 Finton’s characterization.

28 ² Count IV was brought only against the Club. (Doc. 24.) The Club is the sole defendant remaining in this case.

1 In the Amended Complaint, Ms. Finton alleges that the Club did not pay her
 2 wages owed in violation of A.R.S. § 23-352, which provides that “[n]o employer may
 3 withhold or divert any portion of an employee’s wages.” (Doc. 24.) The Amended
 4 Complaint does not specify what unpaid wages are included in her Count IV claim. In her
 5 Motion for Summary Judgment, however, Ms. Finton argued that she is owed unpaid
 6 wages under Count IV based on “the Club’s refusal to pay Finton for her overtime,
 7 failure to pay her minimum wage, and actions in reducing Finton’s reported time,
 8 refusing to record her reported hours, and requiring or permitting her to work without
 9 compensation.” (Doc. 58 at 15.) In a subsequent response to the Club’s Motion for
 10 Summary Judgment, Ms. Finton argued that she was seeking unpaid wages that do not
 11 include overtime hours. (Doc. 68 at 13–14.) The Court premised its decision on Ms.
 12 Finton’s arguments set forth in her summary judgment motion and found Count IV
 13 preempted by the Fair Labor Standards Act (“FLSA”). (Doc. 75 at 17–19.) The
 14 inconsistency in Ms. Finton’s filings caused the Court to evaluate her Count IV claim as
 15 it did and grant the Club summary judgment. (*Id.*)

16 After reading Ms. Finton’s instant Motion, the Court now understands her Count
 17 IV claim only to include recovery of unpaid wages at the “regular hourly rate, plus treble
 18 damages, not overtime pay under Arizona’s wage laws.” (Doc. 24 ¶ 118; Doc. 88 at 1–3.)
 19 With this understanding, Ms. Finton may pursue her A.R.S. § 23-352 claim and Count IV
 20 is not preempted by the FLSA. *See Vail v. Kopper Crest Manor on Harris LLC*, No. CV-
 21 18-00908-PHX-GMS, 2019 WL 2869672, at *3 (D. Ariz. July 3, 2019). The Club also
 22 recognizes this distinction and agrees with Ms. Finton that the FLSA “does not preempt
 23 her claim for hours that she asserts she worked but that do not constitute overtime
 24 hours.”³ (Doc. 90 at 2.) The Court therefore finds that granting summary judgment was
 25 not appropriate on that basis.

26 The Motion, the Club’s response, and previous filings make clear that there is still

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 28 ³ The Court acknowledges that by agreeing on this point, the Club does not “waive any of
 its other rights to contest or dispute Ms. Finton’s claim to compensation for such hours.”
 (Doc. 90 at 2.)

1 a factual dispute about what unpaid wages Ms. Finton can be compensated for under
2 Count IV. (*See, e.g.*, Docs. 88, 90.) There is also a genuine issue of material fact as to
3 how many, if any, hours Ms. Finton is owed in unpaid wages. Ms. Finton will continue to
4 have the burden to prove that she is entitled to compensation for unpaid wages for a
5 specified amount to be proven at trial. The Court therefore vacates in part its prior ruling
6 (Doc. 75) and denies summary judgment to both parties for Count IV.

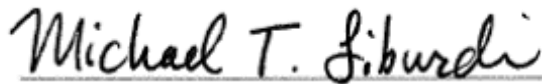
7 **III.**

8 Accordingly,

9 **IT IS ORDERED** that Plaintiffs' Motion for Clarification/Modification of the
10 Court's February 19, 2021 Order Regarding Summary Judgment (Doc. 88) is **granted**.

11 **IT IS FURTHER ORDERED** that the Court's February 19, 2021 Order (Doc.
12 75) is vacated in part, to the extent set forth herein.

13 Dated this 26th day of April, 2021.

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16 Michael T. Liburdi
17 United States District Judge
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